

ARTICLE VI.

NONCONFORMING SITUATIONS

DIVISION 1.

CONTINUATION OF NONCONFORMING SITUATIONS

Sec. 13-801. General.

(a) *Creation of nonconforming situations.* The adoption of the Sumter County Comprehensive Plan and this chapter changed some lawful parcels and uses of land from being in conformance with current regulations to being in nonconformance. Without some relief, the property owner may have substantially different land use and development regulations imposed on him that are in conflict with his previous actions and would prohibit planned future actions.

(b) *Relief for nonconforming situations.* The commission strongly believes that property owner's rights are founded in the U.S. Constitution and the Florida Constitution and excessive governmental regulations applied to lawfully existing development violates the rights of property owners and that the commission should make every effort to comply with State mandates concerning comprehensive planning and development regulations in such a way as to equitably administer the effects of such mandates on property owners. Pursuant to this belief, the general intent and purpose of this article is to provide for statutory, presumptive and common law vesting of lawful parcels and uses of record upon the effective date of this chapter. Therefore, unless otherwise specifically provided in this chapter, and subject to the restrictions and qualifications set forth in this article, nonconforming situations that were otherwise lawful on the effective date of this chapter may be continued.

(c) *Limitations on nonconforming situations.*

(1) All development subject to presumptive or statutory vested rights and common law determinations must be consistent with the terms of the development approval upon which the determination was based. Any substantial deviation from a prior approval, except as required by governmental action, shall cause the development involved to be subject to the policies, regulations and implementing decisions set forth in the adopted comprehensive plan and this chapter.

(2) A vested rights determination shall apply to the land and is therefore transferable from owner to owner of the land unless specifically provided otherwise in the development approval upon which the determination was based.

(3) If the final local development order expires prior to development and extensions permitted under this chapter are not pursued, the vesting status of the property will become null and void.

(4) Land development rights as vested under the terms of this article shall be vested as to the consistency requirements of the comprehensive plan and as to this chapter. Those developments that qualify for statutory vesting shall not be required to comply with the concurrency requirements of the comprehensive plan. Presumptive and common law vested rights shall be required to comply with concurrency requirements.

(5) This article does not address impact fees, special assessments, and similar matters and any determination of vested rights pursuant to this article shall have no effect upon impact fees, impact fee credits, or special assessments or the determination of or implementation of impact fees, impact fee credits or special assessments.

(6) Notwithstanding anything in this article to the contrary, a vested rights determination may be revoked or modified upon a showing by the county, based upon substantial competent, evidence, of a peril to the public health, safety or general welfare of the residents of Sumter County unknown or undisclosed at the time of approval. (Ord. No. 96-23, § 9, 12-16-96)

Sec. 13-802. Statutory vesting.

(a) *Existing uses and structures.* Where a use, or structure on which construction has been completed and certificate of occupancy issued, was lawfully existing on the effective date of this chapter, and is made nonconforming by the adoption of the comprehensive plan and/or this chapter, that use or structure shall be statutorily vested and may continue and expand as provided in this section.

(b) *Completion of nonconforming projects where final local development order or permit has been issued.* Development projects for which development permits were issued prior to adoption of the comprehensive plan or this chapter, that are made nonconforming by such adoption, shall be recognized as statutorily vested.

(1) The following types of projects shall be allowed to develop as approved prior to such adoption:

a. Development orders relating to a development of regional impact (DRI) or a Florida Quality Development (FQD) issued pursuant to Chapter 380, Florida Statutes or any successor statute to said Chapter approved prior to the effective date of this chapter.

1. Land uses and development standards specified in the Application For development approval and approved development order shall be statutorily vested, provided the development order has not expired at the time this chapter or an amendment thereto is adopted, and on which development activity has commenced or does commence and proceeds according to the time limits in the regulations under which the development was originally approved. If the development plan expires or is otherwise invalidated, any further development on that site shall occur only in conformance with the requirements of this chapter or amendment thereto.

2. Land uses and development standards not specified in the application for development approval and approved development order shall occur only in conformance with the requirements of this chapter or amendment thereto.

b. DRI scale developments existing prior to February 3, 1992, pursuant to Chapter 380.06, Florida Statutes, provided a valid, unexpired binding letter pursuant to Chapter 380, Florida Statutes, or any successor statute to said Chapter exists.

c. Projects for which the right to develop or to continue the development of the property is demonstrated by a valid and unexpired final local development order issued by Sumter County prior to the effective date of this chapter.

1. Development must have commenced prior to the effective date of this chapter, or any amendment thereto, and is continuing in good faith, or development will be commenced after the effective date but within six (6) months of issuance of the permit.

2. Once commenced, the development activity must continue without interruption (except because of war or natural disaster) until the development is complete. If the development permit expires, any further development on that site shall occur only in conformance with the requirements of this chapter or amendment thereto.

d. Subdivision projects holding a valid, unexpired development plan approval shall have a period of two years after the effective date of this chapter in which to obtain a local development order. If the project is phased, a development order obtained within the two year period will vest the following phases only if development has commenced and is continuing in good faith.

e. Property vested pursuant to Sumter County Mining Ordinance No. 90-12.

(2) Nothing in this subsection shall be construed to authorize development that is inconsistent with the comprehensive plan.
(Ord. No. 96-23, § 9, 12-16-96)

Sec. 13-803. Presumptive vested rights.

(a) *Nonconforming parcels.*

(1) *Undersize parcels.* When a nonconforming parcel can be used in conformity with all of the regulations applicable to the permissible use, except that the parcel is smaller than the required minimums set forth in this chapter, then the parcel may be used as proposed, subject to the other requirements of this chapter. Presumptive vested rights determinations made under this subsection do not have an expiration date. Specifically, the following nonconforming parcels are presumptively vested and may be used just as if they were conforming:

a. Any legally created parcel existing prior to the effective date of this chapter. This is to include parcels created by rezoning, in contrast to those created by deed, upon which a single family residence legally existed on the effective date of this chapter.

b. All lots in subdivisions recorded and platted after February 7, 1973. shall be recognized as individual lots.

c. Lots in platted and unplatted subdivisions recorded or created prior to February 7, 1973, and which were "grandfathered in" when Sumter County adopted its initial development code in 1973, shall be recognized as individual lots as follows:

1. Any individually owned, legally created lot existing prior to February 4, 1992, provided there are no contiguous lots of the same ownership.

2. Contiguous lots of the same ownership shall collectively constitute one parcel up to the density levels of the comprehensive plan and this Code, except:

a) All lots that front on a road in the county system of maintained roads shall be recognized as individual lots, and

b) All lots in platted or unplatted subdivisions of nineteen (19) lots or less shall be recognized as individual lots, and

c) All lots in platted or unplatted subdivisions of twenty (20) lots or more where at least twenty-five (25) percent of the total lots in the subdivision are owned by separate individuals, and in which there has been at least one (1) conveyance of an individual lot between February 4, 1987, and February 4, 1992, shall be recognized as vested individual lots.

3. For purposes of this subsection, multiple plat subdivisions shall be reviewed on a plat by plat basis to determine if an individual plat meets the ownership and conveyance tests set forth in the previous section.

(2) *Illegal parcels.* This subsection does not address parcels which have been created illegally either by conveying out parcels which were smaller in size than permitted under an existing zoning classification or those conveyed in violation of subdivision regulations. Such parcels shall not be recognized as eligible for the rights accorded lawful nonconforming situations in this section. Corrective action in compliance with the comprehensive plan and this chapter shall be required in order for development permits to be issued for such parcels.

(b) *Nonconforming land use approvals and development plan approvals.* Special uses, conditional uses and variances shall expire as provided by the approving authority, except that approvals not implemented within one (1) year of the effective date

of this chapter, shall expire.
(Ord. No. 96-23, § 9, 12-16-96)

Sec. 13-804. Common law vesting.

Those developments that were granted common law vested status prior to the adoption of this chapter shall lose that status on February 3, 1997, unless (i) an extension has been granted by the commission, or (ii) a development permit has been issued and is current and development is continuing in good faith, or (iii) development has been completed. Upon loss of status, the property shall be subject to the requirements of the comprehensive plan and this chapter.

(Ord. No. 96-23, § 9, 12-16-96)

Secs. 13-805--13-815. Reserved.

DIVISION 2.

**OPERATION, MAINTENANCE, REPLACEMENT, EXTENSION,
ENLARGEMENT OR CHANGE OF NONCONFORMING USES AND
STRUCTURES**

Sec. 13-816. Operation and maintenance of nonconforming situations.

(a) *Operation.* Vested nonconforming uses shall be permitted to continue the type of lawful operation existing on the effective date of this chapter. The volume, intensity, or frequency of use of the property may be increased and the equipment or processes used may be changed if these or similar changes amount only to changes in the degree of activity rather than changes in kind and no new nonconforming situations are created.

(b) *Maintenance and repair.* Vested nonconforming uses and structures shall be permitted to maintain, repair and replace in compliance with current codes and permitting requirements.

(Ord. No. 96-23, § 9, 12-16-96)

Sec. 13-817. Replacement, restoration, alteration or expansion of nonconforming situations.

(a) *Nonconforming uses.*

(1) A vested use may be altered or expanded provided that use is restricted to the same parcel on which the use existed when the non-conforming use was created, and is not done in such a manner that creates a new non-conforming use, or changes to uses which are more inconsistent with the comprehensive plan or this chapter. Creation of new non-conforming uses shall include a change in occupancy as specified in subsection 13-172(f) or an expansion of the existing occupancy as to significantly change the character

of the use.

(2) All alterations and expansions of vested nonconforming uses and structures shall be made in such a manner as to maximize compliance with current development standards such as setbacks, parking requirements and drainage requirements.

(b) *Nonconforming structures.*

(1) *Replacement and restoration of nonconforming structures.*

a. All nonconforming structures destroyed or rendered unusable by fire, natural disaster or other such loss, may be replaced or restored to a safe pre-disaster condition at the same location, to current building codes. Mobile homes may be replaced with the same class as was destroyed.

b. All nonconforming structures not destroyed or rendered unusable by fire, natural disaster or other such loss may only be replaced or restored in conformance with the provisions of this chapter.

(2) *Alteration or expansion.* A structure may be altered or expanded provided:

a. Such alteration or expansion is restricted to the same parcel on which the structure existed when the non-conforming situation was created.

b. Such alteration or expansion is not detrimental to adjacent properties or the neighborhood in general.

c. All alterations and expansions of vested nonconforming structures shall be made in such a manner as to maximize compliance with building codes, etc. However, when structures are nonconforming in setbacks due to the provisions of this chapter or the acquisition of public right-of-way, additions may be made to such structures provided the nonconforming setback is not reduced and all other setbacks meet the requirements of this chapter.

(Ord. No. 96-23, § 9, 12-16-96)

Secs. 13-818--13-825. Reserved.

DIVISION 3.

RESERVED

Secs. 13-826--13-835. Reserved.

DIVISION 4.

CHANGE FROM, ABANDONMENT AND DISCONTINUANCE OF

NONCONFORMING SITUATION

Sec. 13-836. Change from nonconforming situation to another nonconforming situation.

(a) *Approval.* A vested nonconforming principal use may be replaced with a different nonconforming principal use where the proposed use is more compatible with surrounding properties, subject to approval by the authority. This approval may be given if the issuing authority finds, in addition to any other findings that may be required by this chapter, that:

- (1) The proposed use must be permissible in some zoning district with either a permitted, special or conditional use approval; and
- (2) The proposed use must have less of an adverse impact on those most affected by it, and be more compatible with the surrounding neighborhood, than the current nonconforming use, and
- (3) Where reasonably possible, all applicable requirements of this chapter will be complied with. Compliance is not reasonably possible if additional land would have to be added to the parcel to achieve compliance, or if a substantial structure on a permanent foundation would have to be moved. Mere financial hardship caused by the cost of meeting such requirements as parking and drainage does not constitute grounds for finding that compliance is not reasonably possible.

(b) *Limitation.* Once the new nonconforming use is achieved, the property may not revert back to its original nonconforming use.
(Ord. No. 96-23, § 9, 12-16-96)

Sec. 13-837. Change from nonconforming to conforming situation.

(a) *Where all requirements met.* If a vested nonconforming use is intended to be changed to a principal use that is permissible in the zone where the property is located, and all of the other requirements of this chapter applicable to that use can be complied with, permission to make the change must be obtained in the same manner as permission to make the initial use of a vacant parcel.

(b) *Where all requirements not met.* If the intended change in use is to a principal use that is permissible in the zone where the property is located, but all of the requirements of this chapter applicable to that use cannot reasonably be complied with, then the change is permissible if the approving authority for that particular use issues a permit authorizing the change. This permit may be issued if the approving authority finds, in addition to any other findings that may be required by this chapter, that all of the applicable requirements of this Code that can reasonably be complied with will be complied with. Compliance with a requirement of this Code is not reasonably possible if compliance cannot be achieved without adding additional land to the parcel where the

nonconforming situation is maintained or moving a substantial structure that is on a permanent foundation, however, mere financial hardship caused by the cost of meeting such requirements as parking and drainage does not constitute grounds for finding that compliance is not reasonably possible. And in no case may an applicant be given permission pursuant to this subsection to construct a building or add to an existing building if additional nonconformities would thereby be created.

(c) *Limitation.* Once conformity with this chapter is achieved, the property may not revert to its nonconforming status.
(Ord. No. 96-23, § 9, 12-16-96)

Sec. 13-838. Abandonment and discontinuance of nonconforming situations.

(a) *Time period.* Subject to subsection (b), when a nonconforming use is (i) discontinued for a consecutive period of two (2) or more years, or (ii) discontinued for any period of time without a present intention to reinstate the nonconforming use, the property involved may thereafter be used only for conforming purposes.

(b) *Vacancy not loss of use.* For purposes of determining whether a right to continue a nonconforming situation is lost pursuant to this section, the following shall apply:

(1) *Discontinuance of use of non-residential structures.* The nonconforming use of commercial, industrial and other non-residential structures shall not be lost pursuant to subsection (a) provided such structures are maintained in good repair, or such nonconforming use may be resumed without expenditure of more than fifty (50) percent of the structure's pre-improvement value to bring it into compliance with current building codes.

(2) *Multiple occupancy/structures situations.* All of the buildings, activities, and operations maintained on a parcel are generally to be considered as a whole. For example, the failure to rent one apartment on a nonconforming apartment building for one year shall not result in a loss of the right to rent that apartment or space thereafter so long as the apartment building as a whole is continuously maintained. But if a nonconforming use is maintained in conjunction with a conforming use, discontinuance of a nonconforming use for the required period shall terminate the right to maintain it thereafter.

(Ord. No. 96-23, § 9, 12-16-96)

Sec. 13-839--13-850. Reserved.

DIVISION 5.

VESTING DETERMINATION AND APPEALS

Sec. 13-851. Vesting determination.

(a) *Statutory vesting.* County staff shall determine statutory vesting of a project or development permit pursuant to the criteria established in section 13-802 and no formal determination process need be used.

(b) *Presumptive vesting.* County staff shall determine presumptive vesting of a parcel and land use approvals and development plan approvals pursuant to the criteria established in section 13-803 and no formal determination process need be used.
(Ord. No. 96-23, § 9, 12-16-96)

Sec. 13-852. Appeals.

(a) *From county staff decisions.* Decisions of county staff as to statutory and presumptive vesting determinations are appealable to the commission pursuant to section 13-236.

(b) *From commission decisions.* A decision of the commission concerning vested rights may be subjected to judicial review as determined by general law, provided, however, no appeal to the courts shall be available unless the applicant has exhausted all available administrative remedies including, but not limited to, appeal to the commission. An appeal for judicial review must be filed within thirty (30) days of the action of the commission.

Secs. 13-853--13-875. Reserved.

DIVISION 6.

RESERVED

Secs. 13-876--13-900. Reserved.